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# **WHITE -COLLAR CRIMES**

AUTHORED BY - S. BHUVANESHWARI BALAJI

## **Abstract:**

White-collar crime is invisible. Offences are connected within occupational and organisational routines and are difficult to detect by victims, observers or law enforcers, and few offenders are tried and sentenced in open court. It is also absent from public and academic discussions of crime and criminal justice policy. Finally, we will briefly outline the discussions of how this vast group of offences can be controlled.

## **Keywords:**

Crime, erode, public's trust, high social status, Blackmail, Bribery, Cheating, Corruption, SEBI, CVC, RBI,

“The practitioners of evil, hoarders, the profiteers, the black marketers, and speculators are the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.”

Dr. S .Radhakrishnan<sup>1</sup>

## **Introduction:**

White-Collar crimes are not violent, but they are not victimless. White-collar crimes can destroy a company, wipe out a person's life savings, cost investors billions of dollars, and erode the public's trust in institutions.<sup>2</sup>

## **History behind the definition:**

The most influential criminologist of the 20th century and also a sociologist, Edwin Hardin Sutherland, for the first time in 1939, defined white collar crimes as “crimes committed by people

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<sup>1</sup> The **Certificate in Introduction to White Collar Crimes in India** is brought to you by one of the eminent law firms in India, **Scriboard Advocates and Legal Consultants**, in association with Enhelion.

<sup>2</sup> <https://www.fbi.gov/investigate/white-collar-crime>

who enjoy the high social status, great repute, and respectability in their occupation". The five attributes of the given definition are:

- It is a crime.
- That is committed by an important person of the company.
- Who enjoys a high social status in the company.
- And has committed it in the course of his profession or occupation.
- There may be a violation of trust.<sup>3</sup>

### ***Mens rea***

To constitute a crime element of *mens rea* and *actus reus* is must. Where *mens rea*, In white collar crimes is not necessary

## **White Collar Crime In Foreign**

White collar crime also encompasses those businesses that are international, which is covered under the Foreign Corrupt Practices Act (FCPA). The FCPA prohibits American businesses from making payments to government officials for the purpose of obtaining or retaining business and contracts in foreign countries; it also prohibits third-party payments, including joint-venture partnerships, in which payment is made to a third party with the knowledge that some or all of that payment will be passed on to a foreign government official as a bribe.

Therefore, the FCPA applies not only to bribery but also to money laundering. It also applies to foreign businesses listed on the U.S. Stock Exchange and those conducting business from within the United States.<sup>4</sup>

## **White collar crime in India**

Corruption, fraud, and bribery are some of the most common white collar crimes in India as well as all over the world. The Business Standard on 22.11.2016 published a report titled 'The changing dynamics of white collar crime in India' stating that in the last 10 years, the Central Bureau of Investigation (CBI) has found a total of 6,533 cases of corruption out of which 517 cases were registered in the past two years.

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<sup>3</sup> Edwin H. Sutherland. "White Collar Crime," Page 9. Dryden Press, 1949.

<sup>4</sup> <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/white-collar-crime/>

India is a developing country and white collar crimes are becoming a major cause for its under development along with poverty, health, etc. The trend of white collar crimes in India poses a threat to the economic development of the country. These crimes require immediate intervention by the government by not only making strict laws but also ensuring its proper implementation.

### **Blackmail**

**Section 503** of the Indian Penal Code, 1860 defines blackmailing or criminal intimidation as, making a demand for money or any other consideration by imposition of threat to cause physical injury, or to cause damage to ones property, or to accuse one of a crime, or to expose somebody's secret. The threat can be induced in the following ways:

By revealing a secret of the person which the offenders knows if revealed will cause great embarrassment to the victim. For example, if A, the Managing Director of the company XYZ, knows that B, a female employee of the same company, was bearing the child of somebody other than her husband. A asked B to commit forgery on the account papers so that he could embezzle 20 lakhs rupees from the company without anybody knowing about it, or else he would reveal her secret which would cause great embarrassment not only to her but her family as well.

### **Bribery**

Bribery is a white collar crime where a person asks for money, or a favor, or something of value in order to get the other person's work done. For example, if an electoral officer asks a person to offer him wine and only then will he be allowed to give vote, it would amount to bribery.

The punishment for bribery has been provided under Section 171E of the Indian Penal Code, 1860 which says that any person who commits such an offence would be imprisoned for a term which may extend to 1 year or with fine or both. Also, Section 13 of the Prevention of Corruption Act, 1988 has penalised acts constituting an offence under this head, being engaged in by public officials.

## **Some of section under Indian Penal Code of 1860**

166. public servant disobeying law, with intent to cause injury to any person.

166a. Public servant disobeying direction under law.

169. Public servant unlawfully buying or bidding for property.

171b. Bribery

182. False information, with intent to cause public servant to use his lawful power to the injury

of another person.

420. Cheating

503. Blackmail

...etc

## **Reasons for the growth of white collar crimes in India**

Greed, competition and lack of proper laws to prevent such crimes are the major reasons behind the growth of white collar crimes in India.<sup>5</sup>

### ***Laws against white collar crimes in India***

1. Companies act, 1960
2. Income tax act, 1961
3. Indian penal code, 1860
4. Commodities act, 1955
5. Prevention of corruption act, 1988
6. Negotiable instrument act, 1881
7. Prevention of money laundering act, 2002
8. It act, 2005.
9. Imports and exports (control) act, 1950.

### **Few Land mark Cases in India:**

1. Harshad Mehta Securities Fraud (1988-1995)

Stockbroker Harshad Mehta founded Grow More Research & Asset Management Limited, a security company, in 1990. Investors blindly followed Mehta's lead because he was a well-known name in the stock market and was known as the "Sultan of Dalal Street."

He created a fictitious market by borrowing sizable sums from the bank and buying the scrips at exorbitant prices. He took advantage of his position to manipulate certain scrips' stock prices for his own benefit. This led to an unnatural infusion of cash into the stock markets, which abnormally increased the price of these shares. Despite being immoral, Harshad Mehta's action was legal.

2. Satyam Scandal: biggest-ever corporate accounting fraud

A confession letter written by B. Ramalingam Raju, founder and chairman of Satyam Computers

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<sup>5</sup> <https://blog.ipleaders.in/white-collar-crimes/>

Services Limited, and published in Times of India on January 7, 2009, revealed this scam. In the letter, he admitted to tampering with his books of accounts by inflating assets and understating liabilities.

The company's financial situation is reflected in the books of accounts. Before making an investment, investors can rely on them as a crucial tool. Accounts books were falsified in order to defraud shareholders and investors.

The total cost of the fraud was around 14,000 crore, and it is thought to have played a significant role in the 2009 recession.

In response to this scandal, SEBI responded forcefully, finding Ramalinga Raju and nine significant associates guilty of insider trading as well as engaging in dishonest and unfair business practices. In addition to prohibiting the accused from entering the security markets in any way for a period of 14 years, SEBI ordered the accused to pay approximately 3000 crores within 45 days. In order to ensure that a similar scam never occurred again, SEBI was able to respond strongly.<sup>6</sup>

#### Necessity

People also commit white collar crimes to meet their own needs and the needs of their family. But the most important thing that the people of high social status want to feed their ego.

The reasons behind white collar criminals going unpunished are:

- Legislators and the people implementing the laws belong to the same class to which these occupational criminals belong.
- The police put in less effort in the investigation as they find the process exhausting and hard, and often these baffling searches fail to promise favorable results.
- Laws are such that it only favours occupational criminals.
- The judiciary has always been criticised for its delayed judgment. Sometimes it so happens that by the time court delivers the judgments, the accused has already expired. This makes criminals loose in committing crimes. While white collar crimes are increasing at a faster rate, the judiciary must increase its pace of delivering judgments.

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<sup>6</sup> [https://vakilsearch.com/blog/top-white-collar-crime-cases-in-india/#:~:text=Harshad%20Mehta%20Securities%20Fraud%20\(1988%2D1995\)&text=Investors%20blindly%20followed%20Mehta's%20lead,the%20scrips%20at%20exorbitant%20prices.](https://vakilsearch.com/blog/top-white-collar-crime-cases-in-india/#:~:text=Harshad%20Mehta%20Securities%20Fraud%20(1988%2D1995)&text=Investors%20blindly%20followed%20Mehta's%20lead,the%20scrips%20at%20exorbitant%20prices.)

## **Functionaries in India to regulate White collar crimes**

- Securities and Exchange Board (SEBI)-
- The Central Vigilance Commission (CVC)
- Lokpal
- Reserve Bank of India (RBI)

### **Conclusion:**

White collar crimes have two surprising features, first, that they are non-violent crimes, though the criminals have the tendency to gain control or have a sense of entitlement, and, second, that they are committed by people in the higher profession.

However, these crimes are also committed by poorly paid underlings, although the mastermind behind the commission of such crime could be a rich person enjoying a higher social status in his occupation. white collar crimes are often committed because of peer pressure or are dependent on the culture of the company.

As our society is growing towards modernity and the world is experiencing new technological advancement, the rate of crime is also increasing at a faster rate. Particularly the growth in white collar crimes has been enormous. From the medical profession to educational institutions, these crimes are being committed everywhere.

The cases of online fraud are also increasing at an alarming rate. India, as a developing nation, has faced difficulties in leading its economy towards growth because of these crimes in general and corruption in particular.

The investigating officials are in need of training where they could acquire the skill to trace these criminals, otherwise tracking of whom is difficult, complicated and tiresome job. The investigating officials's work should be scrutinized to ensure transparency in the work as the white collar crimes are committed by people enjoying higher social status in their occupation.

The government must make laws that are strict enough to reduce the commission of such crimes. And the system should be such that not only there exist laws giving strict punishment to the accused but also dispose off maximum cases in a short while. If not done so then people will soon

lose complete faith in the system, as these crimes are committed by people who should act as a role model for the society.

The media has a key role to play in reducing the rate of increasing white collar crimes. It has been noted that most of the white collar crimes go unreported. So, if the media becomes more active towards publishing frauds and scams at higher levels and revealing how do the people at higher position in a company use their powers arbitrarily, and also make efforts in making people aware about the white collar crimes, and avoid corrupt practices, then this would definitely help in reducing the rate at which the white collar crimes are being committed.

